And thereupon the said Yazoo & Mississippi Valley Railroad Company did then and there confine the said cattle in a car marked IC-31505, and conveyed the said cattle over the railroad of the said Yazoo & Mississippi Valley Railroad Company to Jackson Station aforesaid without unloading said cattle, and at 8:15 o'clock in the evening of October 8, 1932, there delivered said cattle to the defendant, which said defendant did then and there further confine said cattle in said car and did convey the said cattle over its line of road to New Orleans Station aforesaid where they were unloaded, the unloading thereof beginning at 4:00 o'clock in the afternoon of October 10, 1932.

And said defendant within the jurisdiction of this Court did knowingly and willfully confine said cattle in the aforesaid railroad car for a period of more than 36 consecutive hours, to-wit, for 37 hours, without unloading said cattle for any period of rest, water, and feeding, said period of 37 hours including the period said cattle were confined on the road of said Yazoo & Mississippi Valley Railroad Company without said cattle having been unloaded as aforesaid.

3

And said defendant was not prevented from unloading said cattle by storm or other accidental or unavoidable causes which could not have been anticipated or avoided by the exercise of due diligence and foresight.

Whereby and by virtue of an Act of Congress entitled "An Act to Prevent Cruelty to Animals While in Transit by Railroad or other Means of transportation from one State or Territory or the District of Columbia into or through another State or Territory or the District of Columbia" (34 Statutes at Large, 607), an action hath accrued to the plaintiffs and said defendant hath forfeited and become liable to pay to the plaintiffs a penalty of

not less than one hundred dollars and not more than five hundred Dollars for the aforesaid confinement of said cattle.

Wherefore the plaintiffs pray judgment for five hundred dollars and for their costs herein expended and for all proper relief.

(Sgd) E. E. TALBOT
United States Attorney for the
Eastern District of Louisiana.

4

ANSWER

Filed May 22, 1933.

In the District Court of the United States
Eastern District of Louisiana

Unted States of America

vs. No. 232 At Law
(D. of A. No. 19937)

Illinois Central Railroad Company, a Corporation

Now into Court, through undersigned attorneys, comes the Illinois Central Railroad Company, made defendant herein, and in answer to the petition of the United States of America denies generally and singularly each and every allegation herein contained, except such as may be hereinafter admitted, and for further answer says:

I.

It admits the allegations of the first paragraph of the petition of the United States of America.

II.

It admits the allegations of the second paragraph of the petition of the United States of America.

III.

It admits the allegations of the third paragraph of the petition of the United States of America, except the allegation that the unloading of the cattle began at 4:00 o'clock in the afternoon of October 10, 1932, which allegation it denies, and defendant avers that the unloading began at 4:00 o'clock on the morning of October 10th, 1932.

IV.

It denies the allegations of the fourth paragraph of the petition of the United States of America, and specially denies that it did knowingly and wilfully confine the cattle for a period of more than thirty-six hours.

V.

It denies the allegations of the fifth paragraph of the petition of the United States of America.

VI.

It denies the allegation of the sixth paragraph of the petition of the United States of America and specially denies that it has forfeited or become liable to pay to the United States of America any sum whatsoever.

5

VII.

Further answering, defendant avers that I. C. Car No. 31505 was loaded with cattle at Hermanville, Missis-

sippi, at 3:00 o'clock in the afternoon of October 8th, 1932, and shipped to New Orleans, Louisiana, with a thirty-six hour release signed by the shipper. This car arrived at Stuyvesant Docks Yards at or about 11:35 P. M. on October 9th, 1932, with two other cars of cattle. Defendant's Night General Yardmaster received advance information from the defendant's train dispatcher at McComb, Mississippi, of the approximate time of arrival of these three cars and when the period of rest for the cattle was up, and because of the necessity of prompt handling of the said cattle and the improbability of handling it on regular trains, an extra engine and crew were procured and were in waiting for the arrival of these cars of cattle, including I. C. Car No. 31505, and immediately switched said cars and placed them, including I. C. Car No. 31505, in the Crescent City Stock Yards, for delivery at 2:50 A. M. on October 10th, 1932, at which time the period allotted for the confinement of these cattle, to-wit, thirty-six hours, had not elapsed, and the said car was placed for unloading within said period of time. Through oversight the Night General Yardmaster negligently failed to notify the employee of the Illinois Central Railroad Company, whose duty it was to unload the car, that the cattle would be placed for delivery in the early hours of the morning, and because of said oversight and said negligent action of the Night General Yardmaster the said car was not unloaded until 4:00 A. M. on the morning of October 10th.

VIII.

Further answering, defendant avers that it did not knowingly and wilfully confine the said cattle in I. C. Car 31505 beyond the statutory period of thirty-six hours, but, on the contrary, took the greatest pains and went to extra expense to comply with the law and to unload the said cattle within the statutory period, but that

the confinment of the cattle beyond the statutory period was due to the oversight and to the negligent act of its Night General Yardmaster, as aforesaid:

Wherefore, defendant prays that plaintiff's petition be dismissed at its cost.

(Sgd) LEMLE MORENO & LEMLE
Attorneys for Illinois Central,
Defendant.

6 State of Louisiana:
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared SELIM B. LEMLE, who, being by me duly sworn, deposes and says:

That he is a member of the law firm of Lemle, Moreno & Lemle, attorneys for defendant herein; that the President, Vice-President and other managerial officers of the corporation are absent from the State of Louisiana, which is the reason why he makes this affidavit; that he is authorized so to do; that he has read the above and foregoing answer and all the allegations of fact therein contained are true and correct to the best of his knowledge, information and belief.

(Sgd) SELIM B. LEMLE

(Seal)

Sworn to and subscribed before me this 22nd day of May, 1933.

(Signed) LOUIS C. LEMLE,
Notary Public.

(Seal)

7 PLAINTIFF'S PETITION FOR JUDGMENT

Filed April 19, 1934.

In the District Court of the United States

Eastern District of Louisiana.

No. 232—Law (D. of A. No. 19937)

United States of America

vs.

Illinois Central Railroad Company, a Corporation.

On motion of Robert Weinstein, Assistant United States Attorney, attorney for the United States of America, the plaintiff in the above entitled and numbered cause, and on suggesting to the Court that, on the allegations contained in plaintiff's petition herein, and the admissions contained in the defendant's answer, plaintiff is entitled to a judgment as prayed for, and that judgment should be rendered accordingly;

It is ordered by the Court that the Illinois Central railroad Company, a corporation, defendant in the above entitled and numbered suit, do show cause on the 25th day of April, 1934, at 10:00 A. M., why judgment should not be rendered in this cause in favor of plaintiff and against said defendant as prayed for in plaintiff's petition.

(Sgd.) WAYNE G. BORAH,
Judge.

April 19, 1934.

8 EXTRACT FORM THE MINUTES
May Term, 1935.

Order overruling motion of United States of America for judgment and reserving to United States bill of exceptions to the ruling of the Court.

New Orleans, Thursday, June 27th, 1935.
Court met pursuant to adjournment,
Present: Hon. Wayne G. Borah, Judge,
Hon. John McDuffie, Judge.

Proceedings before the Honorable John McDuffie, District Judge.

No. 232 (Law)

United States of America

vs

Illinois Central Railroad Company

This cause came on at a former day on the motion for Judgment filed by the United States of America, herein, and was argued by counsel for the respective parties and submitted when the Court took time to consider.

Whereupon, and on due consideration thereof,

It is ordered by the Court, that the motion for Judgment filed by the United States of America herein, be and the same is hereby overruled, counsel for the United States of America reserving a bill of exception to the ruling of the Court.

9 STIPULATION OF FACTS AND WAIVING TRIAL BY JURY

Filed Jan. 22, 1936.

In the District Court of the United States in and for the Eastern District of Louisiana, New Orleans Division

United States of America

vs. No. 232—Law
D. of A. No. 19937

Illinois Central Railroad Company, a Corporation

STIPULATION OF FACTS AND WAIVING TRIAL BY JURY

It is stipulated and agreed that a trial by jury be waived in the above entitled and numbered cause, and that it shall be tried before the United States District Court, without the aid or intervention of a jury. It is further stipulated that the parties herein agree that for the purpose of the trial and final hearing of this case, the following facts are true:

I.

On October 8, 1932, and before and ever since that date, the defendant, Illinois Central Railroad Company, a corporation, was organized and existing under the laws of the State of Illinois and carried on business in the Eastern District of Louisiana, and was at said time and is now a railroad company within the United States of America, and owned and operated a railroad which formed a part of a line of roads over which cattle, sheep,

swine and other animals are conveyed from one state to another, to-wit, from the State of Mississippi, into the State of Louisiana, and over which said line of road, the cattle hereinafter mentioned were conveyed from the State of Mississippi into another State, to-wit, Louisiana, and which said railroad as aforesaid owned and operated by the defendant extends in part from New Orleans, Louisiana, to Jackson, Mississippi; and The Yazoo & Mississippi Valley Railroad Company, then and there owned and operated another railroad, which said railroad company owned and operated by the said The Yazoo & Mississippi Valley Railroad Company connected with the said road of the defendant at Jackson in the State of Mississippi and extended from said Jackson to Hermanville, Mississippi.

II.

On October 8, 1932, at 3:00 o'clock in the afternoon, the said The Yazoo & Mississippi Valley Railroad Company, at Hermanville Station aforesaid, received from F. R. Sawer, the owner thereof, a certain number of cattle, to-wit, sixty-one (61) calves, consigned to W. H. Hodges & Company, New Orleans, Louisiana; and the owner of said cattle did then and there duly request in writing that the period of confinment of said cattle be extended to thirty-six (36) hours.

III.

Thereupon the said The Yazoo & Mississippi Valley Railroad Company did then and there confine the said cattle in a car marked IC-31505, and conveyed the said cattle over the railroad of the said The Yazoo & Mississippi Valley Railroad Company to Jackson Station aforesaid, without unloading said cattle and at 8:15 o'clock in the evening of October 8, 1932, they delivered said

cattle to the defendant, which said defendant did then and there further confine said cattle in said car and did convey the said cattle over its line or road to New Orleans Station aforesaid, where they were unloaded, the unloading thereof beginning at 4:00 o'clock in the morning of October 10, 1932.

IV.

The said defendant within the jurisdiction of this Court did confine the said cattle in the aforesaid railroad car for a period of more than thirty-six (36) consecutive hours, to-wit, for thirty-seven (37) hours, without unloading said cattle for a period of rest, water and feeding, the said period of thirty-seven (37) hours including the period said cattle were confined on the road of the said The Yazoo & Mississippi Valley Railroad Company, without said cattle having been unloaded as aforesaid.

10

V.

Said defendant was not prevented from unloading said cattle by storm or other unavoidable cause, but did not unload said cattle within the statutory period for the reasons set out in the following article hereof.

VI.

The aforesaid car IC-31505 was loaded with cattle at Hermanville, Mississippi, at 3:00 o'clock in the afternoon of October 8, 1932, and shipped to New Orleans, Louisiana, with a thirty-six (36) hour release signed by the shipper. This car arrived at the Styvesant Stock Yards at 11:35 P. M. on October 9, 1932 with two other cars of cattle. Defendant's Night General Yardmaster received advance information from the defendant's dis-

patcher at McComb of the approximate time of the arrival of these three cars and when the period of rest for the cattle was up, and because of the necessity of prompt handling of the said cattle and the improbability of handling it on regular trains, an extra engine and crew were procured and were in waiting for the arrival of these cars of cattle, including IC-31505, and immediately switched said cars and placed them, including IC car 31505 in the Crescent City Stock Yards for delivery at 2:50 A. M. on October 10, 1932, at which time the period allowed for the confinment of these said cattle, to-wit, thirty-six (36) hours had not elapsed, and the said car was placed for unloading within said period of time.

VII.

The Night General Yardmaster, knowing how long the cattle had already been confined, failed to notify the employee of the Illinois Central Railroad, whose duty it was to unload the car, that the cattle car was to be placed for delivery in the early hours of the morning and because of this failure of the Night General Yardmaster, the said car was not unloaded until 4:00 o'clock A. M. on the morning of October 10, 1932. It was the duty of the Night General Yardmaster under the instructions of the Illinois Central Railroad Company to notify the employee of the Illinois Central Railroad Company as to when the cars would be placed for delivery. The Night General Yardmaster is now dead.

The parties herein reserve the right to introduce in evidence at the trial of this cause, other facts which are not inconsistent with the stipulations herein entered into.

By agreeing to the statements contained in the above stipulations, the parties herein are not agreeing as to

any legal rights resulting therefrom and particularly are not agreeing as to whether or not, under the above stipulations said cattle were knowingly and wilfully confined for more than thirty-six hours, but said legal rights are to be determined by the facts set forth in these stipulations and any evidence introduced on the trial of this cause.

(Sgd LEMLE, MORENO & LEMLE
Counsel for Defendant

(Sgd) ROBERT WEINSTEIN
Assistant U. S. Attorney,
Counsel for United States of America.

11 MOTION FOR JUDGMENT IN FAVOR OF UNITED STATES OF AMERICA,

Filed Jan. 22, 1936.

In the District Court of the United States
For the Eastern District of Louisiana
New Orleans Division

United States of America

vs. No. 232—Law
D. of A. No. 19937

Illinois Central Railroad Company, a Corporation

MOTION FOR JUDGMENT IN FAVOR OF THE UNITED STATES OF AMERICA

Now comes the United States of America, plaintiff in the above entitled and numbered cause, appearing through Robert Weinstein, Assistant United States At-

torney, its undersigned counsel, and moves this Honorable Court for a judgment in favor of the United States of America as prayed for in the above entited and numbered cause, together with interest and costs, on the grounds that the facts and the law are in favor of the United States of America and entitle the United States of America to judgment as prayed for.

(Sgd) ROBERT WEINSTEIN
Assistant United States Attorney.

12 MOTION FOR JUDGMENT IN FAVOR OF DEFENDANT

Filed Jan. 22, 1936.

United States District Court
Eastern District of Louisiana
New Orleans Division

United States of America

vs. No. 232, at Law
D. of A. No. 19937

Illinois Central Railroad Company, a Corporation

Now comes Illinois Central Railroad Company, made defendant herein, and at the close of all of the evidence

(1) Moves the court to find a judgment in favor of the Illinois Central Railroad Company on all the evidence and on the law.

(2) In the alternative only, and in the event that the court should not find a judgment in favor of the Illinois Central Railroad Company, defendant, and re-

serving the right in that event to except to the refusal so to do, and to reserve a bill of exceptions thereto, to which said bill of exceptions shall be annexed all of the evidence, both oral and written in this cause, the defendant, Illinois Central Railroad Company requests the court to charge itself as follows:

(a) That before the Illinois Central Railroad Company, defendant, can be found liable herein, it must appear that the failure to unload the cattle within the statutory period was knowing and wilful.

(b) That there is no evidence before the court that the failure to unload the cattle within the statutory period was knowing and wilful, but that said failure was due to ordinary negligence on the part of an employee of the Illinois Central Railroad Company.

(c) That the negligent failure of an employee of the Illinois Central Railroad Company to cause the cattle to be unloaded within the statutory period will not render the Illinois Central Railroad Company liable for any penalty herein.

Further, as a part of said alternative request Illinois Central Railroad Company moves the court to make a general finding in its favor and to make the following special findings of law and fact:

(a) That the Illinois Central Railroad Company, defendant, attempted in good faith to comply with the statutory requirement to unload the cattle within the statutory period.

13 (b) That the failure of the Illinois Central Railroad Company to unload the cattle during the statutory period was not knowing and wilful.

(c) That the failure of the Illinois Central Railroad Company to unload the cattle during the statutory period was due to the negligent oversight of the night yardmaster employed by the said defendant in failing to notify an employee of the Illinois Central Railroad Company to unload the said car of cattle within the statutory period after the said night yardmaster had caused the said cattle to be transported to destination by a special train in a bona fide attempt to observe the said statutory requirement to unload the cattle within thirty-six hours.

(Sgd) LEMLE, MORENO & LEMLE
Attorneys for Illinois Central
Railroad Company

14 REQUEST OF UNITED STATES OF AMERICA FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW,

Filed January 22, 1936.

In the District Court of the United States
For the Eastern District of Louisiana
New Orleans Division

United States of America

vs. Docket No. 232—Law
D. of A. No. 19937.

Illinois Central Railroad Company, a Corporation.

PLAINTIFF'S PETITION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Plaintiff, upon the pleadings and the stipulation filed herein, respectfully requests the Court to make findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. All of the facts set forth in the stipulated statement of facts which stipulation is attached hereto and made a part hereof.

2. The defendant, Illinois Central Railroad Company, under the facts set forth in the stipulation which has been attached hereto and made a part hereof, "knowingly and wilfully" failed to unload the animals within the statutory time, within the meaning of Sections 71, 73 and 74 of Title 45 United States Code.

3. There is no evidence before the Court to show that the failure to unload the animals within the statutory time limit was due to a cause other than its knowing and wilful conduct, within the meaning and intent of Sections 71 and 75 of Title 45 United States Code.

CONCLUSIONS OF LAW

1. The Cruelty to Animals Act of June 29, 1906, Chapter 3594, (Title 45 USC Sections 71, 73 and 74) is a civil statute and a remedial one. One purpose of the statute is to prevent the slaughtering of animals for food when in a feverish condition brought about by long confinement without food, water and rest. The main purpose is to prevent cruelty to animals shipped. Accordingly, it should be liberally construed so as to effectuate its purpose.

15 2. The failure of an employee of the defendant railroad company to unload the animals within the statutory period, after a full knowledge of the facts as set forth in paragraphs six and seven of the stipulated facts, was negligence and that negligence was constructively the negligence of the corporation, Illinois Central Railroad Company.

3. The defendant, Illinois Central Railroad Company, a Corporation, could, of course, only act through agents, and its answer expressly alleges that "through oversight the Night General Yardmaster negligently failed to notify the employee of the Illinois Central Railroad Company, whose duty it was to unload the car, that the cattle would be placed for delivery in the early hours of the morning, and because of said oversight and said negligent action of the Night General Yardmaster the said car was not unloaded until 4:00 A. M. on the morning of October 10th." The facts expressly alleged in the answer negative the claim that the failure to rest, feed and water was not the result of knowledge and wilfulness on the part of the company. It knew through its agents, and through them only could know, that the cattle were loaded on its cars, when their transportation commenced, where it should rest, water, and feed them as required by the statute, instead of doing which, it, through its agents, continued to hold them in its cars longer than the statutory period without rest, feed, or water. When the company did this, according to its own averments, by and through the only means it transported or could transport them at all, namely, its agents, it did so "knowingly and wilfully," within the meaning of the Cruelty to Animals Act.

4. In order for the Court to find a violation of the Cruelty to Animals Act, it is only necessary to find that the defendant "knowingly and wilfully" failed to comply with the law, notwithstanding the fact that there may have been no evil motive or intent in the transaction.

5. Oversight and forgetfullness do not excuse the overconfinement of animals under the Cruelty to Animals Act.

6. Section 71 of Title 45 United States Code sets forth a proviso which releases a carrier from liability when there has been an overconfinement of animals when "prevented by storm or other accidental or unavoidable causes which can not be anticipated or avoided by the exercise of due diligence and foresight." Since the carrier seeking to avail itself of the defense afforded by the proviso must prove its diligence, it cannot be said that by merely denying that it "knowingly and wilfully" failed to unload the animals, it may escape the statutory penalty by proving negligence.

16

7. Sections 71 and 73 of Title 45 United States Code should be read in pari materia, in an action for a penalty as provided in Section 73. In other words, in order to determine whether an action of a carrier has been "knowingly and wilfully" committed as set forth in Section 75, the language of Section 71 of the Act should be considered.

8. A negligent failure to comply with the law, with a full knowledge of facts as set forth in the stipulation, is a knowing and wilful failure within the meaning of the Cruelty to Animals Act.

9. Under the undisputed facts of this case there has been a violation of the Cruelty to Animals Act by the Illinois Central Railroad Company, and the United States of America is entitled to judgment as prayed for.

Respectfully submitted,

(Sgd) HERBERT WEINSTEIN,
Assistant United States Attorney.

New Orleans, Louisiana,
January 22nd, 1936.

17 COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Filed Oct. 6, 1936.

In the District Court of the United States in and for the Eastern District of Louisiana
New Orleans Division

United States of America

vs. No. 232—Law
D. of A. No. 19937

Illinois Central Railroad Company, a Corporation

After due consideration of the pleadings filed herein by the respective parties and the stipulation, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. All of the facts set forth in the stipulated statement of facts, which stipulation is attached hereto and made a part hereof.

2. That the Illinois Central Railroad Company, defendant attempted in good faith to comply with the statutory requirement to unload the cattle within the statutory period.

3. That the failure of the Illinois Central Railroad Company to unload the cattle during the statutory period was not knowing and wilful.

4. That the failure of the Illinois Central Railroad Company to unload the cattle during the statutory pe-

riod was due to the negligent oversight of the night yardmaster employed by the said defendant in failing to notify an employee of the Illinois Central Railroad Company to unload the said car of cattle within the statutory period after the said night yardmaster had caused the said cattle to be transported to destination by a special train in a bona fide attempt to observe the said statutory requirement to unload the cattle within thirty-six hours, all as set forth specifically in paragraphs six and seven of the stipulated facts, which are attached hereto and made a part hereof.

5. The Court finds that the defendant, through its proper employee, knew how long the animals had been confined and as the train approached New Orleans it became apparent that it could not unload them within the time limit unless it had a special engine at its terminal there ready to move the car to the stockyards.

CONCLUSIONS OF LAW

The Court comes to the following conclusions of law, which conclusions have been applied to the facts, and upon which judgment was rendered in favor of the defendant:

1. The Court finds that Section 71 of Title 45 U. S. C. A. should not be read in pari materia with Section 73 of Title 45 U. S. C. A. in an action for a penalty as provided in the latter section. In other words, in order to determine whether an action of a carrier has been "knowingly and wilfully" committed under Section 73, the language set forth in Section 71 of the act should not be considered.

2. The Court finds that negligence of an employee of a carrier, while performing his regular duties is not

equivalent to knowledge and wilfulness as these words are used in Section 73, Title 45 U. S. C. A.

3. The Court finds that in order to render a carrier liable for the penalty provided by Section 73 of Title 45 U. S. C. A., the failure to comply with the statutory regulation for unloading, watering and feeding animals must be occasioned by the knowing and wilful act of a carrier, and negligent failure to comply with the statute would not render the carrier liable for the penalty.

18 4. From the facts stated under Findings of Fact, paragraph five, the Court concludes that the defendant in having the engine available did no more than it was required to do to meet its statutory obligation. The failure of a yardmaster to have an employee ready to unload the animals was negligence and that negligence was constructively the negligence of the corporation. The Court finds that although there was actual negligence as set forth in the conclusions of fact and the stipulation, there was no wilfulness and knowledge within the meaning of Section 73, Title 45 U. S. C. A.

(Sgd) WAYNE G. BORAH,
U. S. Dist. Judge.

19 ORDER DENYING MOTION OF UNITED STATES OF AMERICA FOR JUDGMENT AND FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RESERVING BILL OF ECEPTIONS TO RULING OF THE COURT.

EXTRACT FROM THE MINUTES,

May Term, 1936.

New Orleans, Tuesday, October 6, 1936.
Court met pursuant to adjournment;
Present: Hon. Wayne G. Borah, Judge.

No. 232 (Law)

United States of America

—versus—

Illinois Central Railroad Company,

In this matter, it is ordered by the Court that the motion of United States of America for Judgment be denied, and

It is further ordered that the request of the United States of America for findings of fact and conclusions of law be overruled, counsel for the United States reserving a Bill of exception to each of the above rulings of the Court.

20 ORDER OF COURT RESERVING TO UNITED STATES OF AMERICA BILL OF EXCEPTION TO CONCLUSIONS OF LAW AND FINDINGS OF FACT AND EACH OF THEM.

EXTRACT FROM THE MINUTES,

May Term, 1936.

New Orleans, Tuesday, October 6, 1936

Court met pursuant to adjournment,
Present: Hon. Wayne G. Borah, Judge.

No. 232 (Law)

United States of America

versus

Illinois Central Railroad Company,

On motion of United States of America, through Robert Weinstein, Assistant United States Attorney;

It is ordered by the Court that a bill of exception be allowed the United States of America to the Conclusions of Law, which the Court has stated and to the Findings of Fact and each of them.

21

JUDGMENT

Filed Oct. 6, 1936.

May Term, 1936—

New Orleans, Tuesday, October 6, 1936,

Court met pursuant to adjournment;
Present: Hon. Wayne G. Borah, Judge.

United States of America

No. 232 Law versus

Illinois Central Railroad Company (a corporation)

This cause came on at a former day to be heard before the Court without the intervention of a jury, trial by Jury having been waived by agreement of counsel in writing and on file in the record.

Whereupon, after hearing the pleadings and stipulations offered on behalf of the respective parties and the motion for judgment filed by the defendant, and the arguments of counsel for the respective parties, the matter was taken under advisement.

Whereupon and after due consideration thereof, and for the reasons orally assigned;

It is Ordered, Adjudged and Decreed that there be judgment in favor of the Illinois Central Railroad Company, a corporation, defendant, dismissing the suit of the United States of America.

Judgment rendered October 6, 1936.

Judgment signed November 19, 1936.

(Sgd) WAYNE G. BORAH,
Judge.

22 MOTION AND ORDER PRESERVING AND EXTENDING RIGHTS OF APPEAL ON BEHALF OF UNITED STATES OF AMERICA.

Filed November 25, 1936.

In the District Court of the United States
for the Eastern District of Louisiana
New Orleans Division

United States of America

vs. Docket No. 232—Law
D. of A. No. 19937.

Illinois Central Railroad Company, a Corporation.

MOTION AND ORDER PRESERVING AND EXTENDING RIGHTS OF APPEAL ON BEHALF OF THE UNITED STATES OF AMERICA

On motion of the United States of America, through Robert Weinstein, Assistant United States Attorney for the Eastern District of Louisiana, which hereby excepts to the Court's Judgment herein, reiterating the exceptions previously requested and allowed and gives defendant notice of its intention to appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and on suggesting to the Court that in order that the rights of said plaintiff may be properly preserved, it is desirable that an extension of thirty days time be allowed said plaintiff for the taking of all requisite steps looking toward the perfecting of an appeal herein;

It is ordered by the Court that all the rights of said plaintiff, the United States of America, be and they are

hereby preserved, and, accordingly, that the time allowed by law to said plaintiff for taking all requisite steps looking toward the perfecting of an appeal herein to the United States Circuit Court of Appeals for the Fifth Circuit, be and it is hereby extended for a period of thirty days.

New Orleans, Louisiana, this 25th day of November, 1936.

(Signed) WAYNE G. BORAH,
Judge.

23 PETITION OF U. S. OF AMERICA FOR APPEAL AND ORDER ALLOWING SAME.

Filed Jan. 27, 1937.

In the District Court of the United States
for the Eastern District of Louisiana
New Orleans Division

United States of America,
Plaintiff

vs. No. 232 Law

Illinois Central Railroad Company, a corporation
Defendant

PETITION FOR APPEAL TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable Wayne G. Borah, Judge of the United States District Court for the Eastern District of Louisiana:

The above named petitioner, United States of America, considering itself aggrieved by the judgment rendered on October 6, 1936 and signed on November 19, 1936, in the above entitled cause, does hereby appeal from said judgment to the United States Circuit Court of Appeals for the Fifth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed, and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit under the rules of said Court in such cases made and provided.

New Orleans, Louisiana, this 27 day of January, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney

(Signed) ROBERT WEINSTEIN,
Assistant United States Attorney
Attorneys for Petitioner, United
State of America

24 ORDER

Upon due consideration of the foregoing petition for appeal

It is ordered that the appeal herein be allowed as prayed for, and

It is further ordered that a certified transcript of the record of all proceedings be transmitted to the United States Circuit Court of Appeals for the Fifth Circuit.

New Orleans, Louisiana, this 27 day of January, 1937.

(Signed) WAYNE G. BORAH,
United States Judge

25 ASSIGNMENT OF ERRORS

Filed Jan. 27, 1937.

In the District Court of the United States
for the Eastern District of Louisiana
New Orleans Division

United States of America,
Plaintiff

vs. No. 232 Law

Illinois Central Railroad Company, a corporation
Defendant

ASSIGNMENT OF ERRORS

Now comes the said United States of America, plaintiff in the above cause, and files the following Assignment of Errors, upon which it will rely in the prosecution of the appeal herein petitioned for in said cause, from the judgment of this Court rendered on the 6th day of October, 1936 and signed on the 19th day of November, 1936.

1.

The Court erred in overruling plaintiff's motion for judgment on the face of the pleadings and by deciding that from the facts of the pleadings as shown in the plaintiff's petition and the admissions contained in the defendant's answer, the Government was not entitled to judgment.

2.

The Court erred in sustaining the defendant's motion for judgment after the conclusion of the trial of the cause.

3.

The Court erred in overruling the plaintiff's motion for judgment at the conclusion of the trial of the cause.

4.

The Court erred in making the findings of fact and conclusions of law which it signed on October 6, 1936.

5.

The Court erred in failing to find the findings of fact and conclusions of law which were requested by the plaintiff, United States of America.

6.

The Court erred in rendering judgment in favor of the defendant on October 26, 1936.

7.

26 The Court erred in signing the judgment in favor of the defendant which was rendered on October 6, 1936, on November 19, 1936.

8.

The Court erred in failing to hold that the defendant ~~Illinois~~ Central Railroad Company, under the facts set forth in the stipulation, "knowingly and wilfully" failed to unload the animals within the statutory time within the meaning of Sections 71, 73 and 74 of Title 45 United States Code.

9.

The Court erred in failing to hold that there was no evidence before the Court to show that the failure to unload the animals within the statutory time limit was due to a cause other than its "knowing and wilful" conduct within the meaning and intent of Sections 71, and 73 of Title 45 United States Code.

10

The Court erred in failing to hold that Sections 71 and 73 of Title 45 United States Code should be read in pari materiae, and an action for a penalty as provided in Section 73, Title 45 United States Code. In other words, in order to determine whether an action of a carrier has been "knowingly and wilfully" committed as set forth in Section 73, the language in Section 71 of the Act should be considered.

11.

The Court erred in failing to hold that a negligent failure to comply with Sections 71 and 73 of Title 45 United States Code, with a full knowledge of facts as set forth in the stipulation and answer is a "knowing and wilful" failure within the meaning of the cruelty to animals act.

12.

The Court erred in failing to hold that under the undisputed facts of this case there was a violation of the cruelty to animals act by the Illinois Central Railroad Company, and the United States of America was entitled to judgment sustaining its motion for judgment

on the face of the pleadings and also sustaining its motion for judgment at the conclusion of the trial of the cause.

Wherefore plaintiff prays that said judgment may be reversed and for such other and further relief as to the Court may seem just and proper.

New Orleans, Lousiana, January 27th, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney.

(Signed) ROBERT WEINSTEIN,
Assistant United States Attorney

Attorneys for United States of America,
Plaintiff

Presented this 27 day of January, 1937

United States District Judge

27 BILL OF EXCEPTION No. 1

Filed Jan. 27, 1937.

In the District Court of the United States
for the Eastern District of Louisiana
New Orleans Division

United States of America,
Plaintiff,

vs. No. 232 Law

Illinois Central Railroad Company, a corporation,
Defendant.

BILL OF EXCEPTIONS #1

Be it remembered that:

Plaintiff filed its petition on March 22, 1933, a true copy of which is attached hereto and made part hereof, and the defendant filed its answer on May 22, 1933, a true copy of which is attached hereto and made part hereof, and the plaintiff filed a motion for judgment on the face of the pleadings on April 19, 1934, a true copy of which is attached hereto and made part hereof. A hearing on said motion for judgment on the face of the pleadings was had on April 25, 1934 at which time the Government urged that judgment should be rendered in favor of the United States of America for the following reasons, to-wit:

1.

The Government contended that the defendant, Illinois Central Railroad Company, under the facts set forth in

the plaintiff's petition and admitted by the defendant in its answer together with the affirmative admissions of the defendant in its answer, "knowingly and wilfully" failed to unload the animals within the statutory time, within the meaning of Sections 71, 73 and 74 of Title 45 United States Code.

2.

The Government contended that the defendant, Illinois Central Railroad Company, a corporation, could of course only act through agents and its answer expressly alleges that "through oversight the Night General Yardmaster negligently failed to notify the employee of the Illinois Central Railroad Company, whose duty it was to unload the car, that the cattle would be placed for delivery in the early hours of the morning, and because of said oversight and said negligent action of the Night General Yardmaster the said car was not unloaded until 4:00 A. M. on the morning of October 10th."

28 The Government further contended that the facts expressly alleged in the answer negative the claim that the failure to rest, feed and water was not the result of knowledge and wilfulness on the part of the company; that it knew through its agents, and through them only could know, that the cattle were loaded on its cars, when their transportation commenced, where it should rest, water and feed them as required by the statute, instead of doing which, it, through its agents, continued to load them in its cars longer than the statutory period without rest, feed or water; that when the company did this according to its own averments by and through the only means it transported or could transport them at all, viz., its agents, they did so "knowingly and wilfully" within the meaning of the cruelty to animals act, Sections 71, 73 and 74 Title 45 United States Code.

3.

The Government contended that Section 71 of Title 45 United States Code sets forth a proviso which releases a carrier from liability where there has been an over-confinement of animals when prevented by "storm or other accidental or unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight." The Government further contended that since the carrier seeking to avail itself of the defense afforded by the proviso must prove its diligence it cannot be said that by merely denying it "knowingly and wilfully" failed to unload the animals, it may escape the statutory penalty by proving negligence.

4.

The Government contended that a negligent failure to comply with the law, with full knowledge of the facts as set forth in the admissions contained in the defendant's answer considered with the plaintiff's petition, which allegations are in the main admitted by the defendant's answer, is a "knowing and wilful" failure within the meaning of the cruelty to animals act.

The Court after argument took the case under advisement and on June 27, 1935 overruled the Government's motion for judgment on the face of the pleadings, to which ruling the government reserved a bill of exceptions, annexing hereto all of the original offerings above set forth and has made the same a part of this, its bill of exceptions, and now having presented

same to counsel for defendant, does present it
29 to the Court and respectfully prays that it be settled and signed.

New Orleans, Louisiana, this 27 day of January, 1937.

(Signed) WAYNE G. BORAH,
Judge.

Approved:

(Signed) RENE A. VIOSCA,
United States Attorney.

(Signed) ROBERT WEINSTEIN,
Assistant U. S. Attorney.

(Signed) LEMLE, MORENO & LEMLE,
Counsel for Defendant.

30 NOTE:

Petition attached to Bill of Exception No. 1, omitted from transcript, being the same as petition copied at page 2 of this transcript.

31 NOTE:

Answer, attached to Bill of Exception No. 1, omitted from transcript, being the same as answer copied at page 5 of this record.

32 NOTE:

Plaintiff's motion for judgment, filed April 19, 1934, omitted from transcript, being the same as plaintiff's motion for judgment, copied at page 9 of this record.

33 BILL OF EXCEPTION #2

Filed Jan. 27, 1937.

In the District Court of the United States
for the Eastern District of Louisiana
New Orleans Division

United States of America,
Plaintiff

vs. No. 232 Law

Illinois Central Railroad Company, a corporation,
Defendant

BILL OF EXCEPTIONS #2

Be it remembered that:

This cause was set for trial on January 22, 1936 at which time the parties to the case offered in evidence a signed stipulation of the facts which included a waiver of trial by jury. The Government filed a motion for judgment as prayed for in the petition, a true copy of which is annexed hereto and made part hereof, on the following grounds, to-wit:

1.

The Government contended that the defendant, Illinois Central Railroad Company, under the facts set forth in the pleadings and stipulation by the parties to the cause, "knowingly and wilfully" failed to unload the animals within the statutory time, within the meaning of Sections 71, 73 and 74 of Title 45 United States Code.

2.

The Government contended that the defendant, Illinois Central Railroad Company, a corporation, could of course only act through agents and the pleadings and stipulation by the parties to the cause expressly allege that "through oversight the Night General Yardmaster negligently failed to notify the employee of the Illinois Central Railroad Company, whose duty it was to unload the car, that the cattle would be placed for delivery in the early hours of the morning, and because of said oversight and said negligent action of the Night General Yardmaster the said car was not unloaded until 4:00 A. M. on the morning of October 10th." The Government contended further that the facts expressly alleged in the pleadings and stipulation by the parties to the cause negative the claim that the failure to rest, feed and water was not the result of knowledge and wilfulness on the part of the company; that it knew through its agents, and through them only could know,

34 that the cattle were loaded on its cars, when their transportation commenced, where it should rest, water and feed them as required by the statute, instead of doing which, it, through its agents, continued to load them in its cars longer than the statutory period without rest, feed or water; that when the company did this according to its own averments by and through the only means it transported or could transport them at all, viz., its agents, they did so "knowingly and wilfully" within the meaning of the cruelty to animals act, Sections 71, 73 and 74 Title 45 United States Code.

3.

The Government contended that Section 71 of Title 45 United States Code sets forth a proviso which re-

leases a carrier from liability where there has been an over-confinement of animals when prevented by "storm or other accidental or unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight." The Government further contended that since the carrier seeking to avail itself of the defense afforded by the proviso must prove its diligence it cannot be said that by merely denying it "knowingly and wilfully" failed to unload the animals, it may escape the statutory penalty by proving negligence.

4.

The Government contended that a negligent failure to comply with the law, with full knowledge of the facts as set forth in the admissions contained in the pleadings and stipulation by the parties to the cause, which allegations are in the main admitted by the defendant's answer, is a "knowing and wilful" failure within the meaning of the cruelty to animals act.

The Court after argument took the case under advisement and on October 16, 1936 overruled the Government's motion for judgment, to which ruling the Government reserved a bill of exceptions, annexing hereto all of the original offerings above set forth and has made the same a part of this its bill of exceptions, and now having presented the same to counsel for de-
35 fendant, does present it to the Court and respectfully prays that it be settled and signed.

New Orleans, Louisiana, this 27th day of February, 1937.

(Signed) WAYNE G. BORAH,
Judge.

Approved:

(Signed) RENE A. VIOSCA,
Unitel States Attorney.

(Signed ROBERT WEINSTEIN,
Assistant U. S. Attorney.

(Signed) LEMLE, MORENO & LEMLE,
Counsel for Defendant.

36 NOTE:

Petition attached to Bill of Exception No. 2, omitted from transcript, being the same as petition copied at page 2 of this transcript.

37 NOTE:

Answer, attached to Bill of Exception No. 2, omitted from transcript, being the same as answer copied at page 5 of this record.

38 NOTE:

Motion for Judgment in favor of United States of America, attached to Bill of Exception No. 2, omitted from transcript, being the same as document copied at page 15 of this record.

39 NOTE:

Stipulation of facts and waiving trial by jury, attached to Bill of Exception No. 2, omitted from transcript, being the same as document copied at page 11 of this record.

40 BILL OF EXCEPTIONS No. 3

Filed January 27th, 1937.

In the District Court of the United States
for the Eastern District of Louisiana
New Orleans Division

United States of America,
Plaintiff

vs. No. 232 Law

Illinois Central Railroad Company, a corporation,
Defendant

BILL OF EXCEPTIONS #3

Be it remembered that:

On January 22, 1936, prior to the conclusion of the trial of this cause, counsel for the Government made a written request to the Court to render certain findings of fact and conclusions of law, a true copy of which is attached hereto and made part hereof.

The Court on October 6, 1936, made its findings of fact and conclusions of law, a true copy of which is attached hereto and made a part hereof, which findings were contrary to the request of the Government.

To the Court's failure to make its findings of fact and conclusions of law in accordance with the Government's request, the Government reserved this, its bill of exceptions, annexing hereto true copies of the stipulated statement of facts which include the waiver of trial by jury and the Court's findings of fact and conclusions of law,

annexing hereto all of the original offerings above set forth and has made the same a part of this, its bill of exceptions, and now having presented same to counsel for defendant does present it to the Court and respectfully prays that it be settled and signed.

New Orleans, Louisiana, this 27th day of January, 1937.

(Signed) WAYNE G. BORAH,
Judge

Approved:

(Signed) RENE A. VIOSCA,
United States Attorney

(Signed) ROBERT WEINSTEIN,
Assistant U. S. Attorney

(Signed) LEMLE, MORENO & LEMLE,
Counsel for Defendant.

41 NOTE:

Stipulation of facts and waiver of trial by jury, attached to Bill of Exception No. 3, omitted from the transcript, being the same as document copied at page 11 of the record.

42 NOTE:

Plaintiff's petition for findings of fact and conclusions of law, attached to Bill of Exception No. 3, omitted from transcript, being the same as document copied at page 18 of this record.

43 NOTE:

Findings of fact and conclusions of law, attached to Bill of Exception No. 3, omitted from transcript, being the same as document copied at page 22 of this record.

44 In the District Court of the United States for the Eastern District of Louisiana

United States of America,
Plaintiff,

—versus— No. 232 (Law)

Illinois Central Railroad Company, a corporation,
Defendant.

BILL OF EXCEPTIONS #4

Be it remembered that:

On October 6, 1936, the Court made its findings of fact and conclusions of law, a true copy of which is attached hereto and made part hereof, which findings of the Court were contrary to the findings requested by the Government, which request was filed with the Court at the conclusion of the trial on January 22, 1936, a true copy of which is attached hereto and made a part hereof.

To the Court's findings of fact and conclusions of law the Government reserved this, its bill of exceptions annexing hereto true copies of the stipulated statement of facts which include the waiver of trial by jury and the Court's findings of fact and conclusions of law; annexing hereto all of the original offerings above set forth and has made the same a part of this, its bill of exceptions, and now having presented same to counsel for defendant, does present it to the Court and respectfully prays that it be settled and signed.

New Orleans, Louisiana, this 27th day of January, 1937.

(Signed) WAYNE G. BORAH,
Judge.

Approved:

(Signed) RENE A. VIOSCA,
United States Attorney,

(Signed) ROBERT WEINSTEIN,
Assistant United States Attorney,

(Signed) LEMLE, MORENO & LEMLE,
Counsel for Defendant.

45 NOTE:

Stipulation of facts and waiving trial by jury, attached to Bill of Exception No. 4, omitted from transcript, being the same as document copied at page 11 of this record.

46 NOTE:

Plaintiff's petition for findings of fact and conclusions of law, attached to Bill of Exception No. 4, omitted from transcript, being the same as document copied at page 18 of this record.

47 NOTE:

Findings of fact and conclusions of law attached to Bill of Exception No. 4, omitted from transcript, being the same as petition copied at page 22 of this transcript.

48

PRAECIPE

Filed Jan. 27, 1937.

In the District Court of the United States
for the Eastern District of Louisiana
New Orleans Division

United States of America
Plaintiff

vs. No. 232 Law

Illinois Central Railroad Company, a corporation
Defendant

PRAECIPE

To the Honorable Henry J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana:

You are hereby requested to make a transcript of the record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record, the following and no other papers:

1.

The petition filed on March 22, 1933.

2.

The answer which was filed on May 22, 1933.

3.

The plaintiff's motion for judgment on the face of the pleadings which was filed on April 19, 1934.

4.

Order of the Court overruling plaintiff's motion for judgment on the face of the pleadings, together with the plaintiff's reservation of bill of exceptions which was entered on June 27, 1935.

5.

Stipulation between the parties to this cause which was filed on January 22, 1936.

6.

Motion for judgment on behalf of the United States of America.

7.

Motion for judgment which was filed on behalf of the defendant.

8.

Request for findings of fact and conclusions of law which was filed on behalf of the plaintiff.

9.

Order of Court and plaintiff's reservation of bill of exceptions to same entered on October 6, 1936 overruling plaintiff's motion for judgment.

10.

Court's findings of fact and conclusions of law signed by the Court on October 6, 1936.

11.

Order of Court refusing to make its findings in accordance with plaintiff's request for findings of fact and conclusions of law together with reservation of plaintiff's bill of exception.

12.

Order of Court allowing plaintiff bill of exception to its findings of fact and conclusions of law.

13.

Judgment of the Court dismissing plaintiff's suit rendered October 6, 1936 and signed November 19, 1936.

14.

Order of Court granting the plaintiff thirty additional days within which to perfect an appeal which was signed by the Court on November 25, 1936.

15.

Petition for appeal with date of filing.

16.

Order allowing appeal with date of ifling.

17.

Assignment of errors with date of filing.

18

Citation of appeal and acknowledgment of service thereon, with date of filing.

19.

This praecipe with acknowledgment of service thereon, with date of filing.

50 20.

Bills of exceptions with date of filing.

21.

Certificate of Clerk to the correctness of the record as to praecipe.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Fifth Circuit and to be filed in the office of the Clerk of the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana on or before the 26th day of February, 1937.

This 27th day of January, 1937.

(Signed) RENE A. VIOSCA,
United States Attorney

Signed) ROBERT WEINSTEIN,
Assistant United States Attorney
Attorneys for Appellant

Service of the above praecipe accepted and acknowledged this 25th day of January, 1937, and all other and further service of the same waived.

(Signed) LEMLE, MORENO & LEMLE
Attorneys for Appellee

Clerk's Office:

I. H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify the foregoing 50 pages contain and form a full, true, complete and perfect transcript of the record, assignment of errors, and all proceedings in the case entitled "United States of America versus Illinois Central Railroad Company, a Corporation," No. 232 of the Law Docket of this Court, as made up in accordance with praecipe for transcript, copied herein.

Witness, my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 8th day of February, A. D., 1937.

H. J. CARTER,
Clerk.

(Seal)

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission

Extract from the Minutes of April 21st, 1937

No. 8380

UNITED STATES OF AMERICA

v.

ILLINOIS CENTRAL RAILROAD COMPANY

On this day this cause was called, and, after argument by Robert Weinstein, Esq., Assistant United States Attorney, for appellant, and Selim B. Lemle, Esq., for appellee, was submitted to the Court.

Opinion of the court

Filed May 26th, 1937

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 8380

UNITED STATES OF AMERICA, APPELLANT

v.

ILLINOIS CENTRAL RAILROAD COMPANY, APPELLEE

Appeal from the District Court of the United States for the Eastern District of Louisiana

May 26, 1937

Before FOSTER, HUTCHESON and HOLMES, Circuit Judges.

HUTCHESON, Circuit Judge: Suing for penalties under the Cruelty to Animals Act,[1] the United States moved for judgment on the pleadings. This motion overruled and a jury waived, the cause was submitted upon an agreed statement of facts.

The District Judge concluding that the defendant had not, within the meaning of the Act, knowingly and wilfully failed to comply with its provisions, made findings and conclusions and gave judgment accordingly. This appeal tests whether, upon the facts pleaded, stipulated and found,[2] judgment for the United States

Note 1: Act of June 29, 1906, Chapter 3594, Sec. 1-3 and 4 (Title 45 U. S. C. A. Secs. 71–73 and 74).

Note 2: These were in effect that the failure to unload within the time allowed was the result not of deliberate purpose or intent on the part of the carrier or any of its employees to disobey the law, but of the negligent failure of the yardmaster to notify the employee, whose duty it was to unload them, that the car was being placed for unloading.

was demanded. In summary, this is the case the pleadings and stipulation made.

The complaint alleged (1) that the defendant did knowingly and wilfully confine a certain number of cattle in one of its cars for a period of more than thirty six, towit, thirty seven hours, without unloading them. (2) That defendant was not prevented from unloading by storm or other accidental or unavoidable causes which could not have been anticipated or avoided by the exercise of due diligence and foresight. Defendant in its answer (1) admitted that the cattle were actually confined in one of its cars for more than thirty six hours; (2) denied that they were knowingly and wilfully so confined, (3) alleged that their over-confinement was due to the negligent oversight of the night general yardmaster, in this; that though he had, in an earnest and bona fide attempt to comply with the law, taken extra precautions to get the cattle to the place of unloading in time, he had yet, through oversight alone, failed to give notice to the employee whose duty it was to unload them.

By the stipulation it was agreed (a) that there had been one hour's over-confinement of the cattle; (b) that defendant was not prevented from unloading the cattle by storm or other accidental or unavoidable cause; (c) that the defendant did not unload the cattle within the thirty six hours for the reasons and under the circumstances following, that defendant's night general yardmaster, having received advance information of the approximate time of the arrival of the cattle, had, in order to insure their prompt unloading within the time allowed, procured an extra engine and crew, and upon the arrival of the cars had caused them to be switched and placed in the Crescent City Packing Yards for unloading within the time allowed therefor by law; that the unloading was delayed, however, an hour beyond the time because the night general yardmaster though knowing how long the cattle had already been confined, and that they should be unloaded, failed to notify the employee of the defendant, whose duty it was to unload the car, that it was to be placed for delivery. The night yardmaster is now dead.

The District Judge found (1) all the facts stipulated to be true; (2) that the defendant attempted in good faith to comply with the statutory requirement; (3) that its failure to unload the cattle within the time was not knowing and wilful; (4) but was due to the negligent oversight of the night yardmaster in failing to notify the unloading employee, although he had made special efforts by using an extra train and crew, to comply with the law. He concluded that "negligence of an employee of a carrier while performing his regular duties is not equivalent to knowledge and wilfullness, as those words are used in Sec. 3 of the Act in question", and that "failure to unload due to such negligence, does not render the carrier liable for the penalty there provided." He further concluded that though there was actual negligence on the part of the yardmaster, and therefore

by imputation, of the carrier, it was not liable for the penalty because its failure to unload the cattle was not knowing and wilful within the Act.

The United States insists that Sec. 1 of the Act imposes an absolute duty to unload within the time allowed, "unless prevented by storm, or other accidental or unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight", and that Sec. 3 imposes an equally absolute liability for penalties in all cases of failure to unload as required by, and except as excused in, Sec. 1, though the failure is not intentional but inadvertent. It insists, in short, that a failure to unload as provided in Sec. 1 is in law the knowing and wilful failure required under Sec. 3, though the failure to unload was not intentional or with conscious purpose, but the result of mere inadvertent, and unintentional, oversight. It therefore urges upon us that the carrier, having admitted the non-existence of any of the excuses provided for in Sec. 1, must stand in judgment, and that to hold otherwise would result in defeating the law by letting in, in every case, the defense of simple negligence. Appellee, on the other hand, with equal vigor insists that the construction the United States contends for in effect reads out of the statute the two words "knowing and wilful", which, having a fixed and settled meaning in law, essentially condition liability to penalties. It therefore urges upon us that in view of this conditioning, the agreed statement of facts, and the court's findings, no other judgment than one for it could have been entered. It argues that this is so, because (1) the stipulation containing no admission, and there being no evidence, that the failure to unload the cattle was knowing and wilful, the United States has wholly failed in its proof of the ultimate facts, knowingness and wilfulness, essential to its recovery; United States vs. Boston & M. R. R., 84 Fed. (2d) 365, and (2) if the facts agreed to are sufficient to support an inference that the violation was knowing and wilful, they are certainly equally, if not more, sufficient to support the opposite inference, and the District Judge, to whom the utimate issue was submitted, has affirmatively found that the failure to unload was not knowing and wilful, but merely inadvertent.

We think appellee has the right of it. To take appellant's view we should have to disregard the settled meaning of the words "knowing and wilful" when used in penalty and criminal statutes. To take that view we should have to assume that Congress in Sec. 3 idly used two words of known and settled legal meaning, intending that the section should be read as though they were not in it. To take that view we should have to close our eyes to the obvious distinction which Congress plainly intended and aptly made by the use of the words in question, between the duty to unload unless prevented by causes beyond its control, imposed upon the carrier by Sec. 1, and the liability for penalties imposed upon it by Sec. 3 for knowingly and wilfully failing to perform the imposed duty.

There is some difference of opinion in the authorities as to the meaning and intent of the Act. A few decisions [3] have taken the view of it the United States urges upon us. The current of authority, however, runs strongly the other way [4] in accordance with the general rule that the word "wilfully" when used in statutes of this kind, has the well-defined meaning of deliberate and conscious purpose, and that statutes in which it is found subject to penalty or punishment only those who deliberately and consciously, that is, with set purpose, do what they are forbidden by the statutes to do. Such statutes do not subject to penalties those who, though they violate them, do so unintentionally through oversight, or simple negligence.

In C. B. & Q. Ry. vs. United States, 194 U. S. 342, it was said of "wilfully" as used in this statute—

"'Wilfully' means purposely or obstinately, and is designed to describe the attitude of a carrier who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements."

In United States vs. Lehigh Valley R. Co., 204 Fed. 705, it was said of the same statute—

"The verdict requires us to assume that the lambs were not fed within the statutory period; but we repeat that in our opinion the fact is accounted for by negligence, and cannot be attributed to a 'knowing and wilful' disregard of duty.

"These words mean something more than 'negligent.' A knowing and wilful omission to perform a duty is not, we think, the same as a merely careless omission."

In United States vs. Murdock, 290 U. S. 394, it is said of "wilfully" when used in a penal statute—

"The word often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. But when used in a criminal statute it generally means an act done with a bad purpose. * * * without justifiable excuse * * * stubbornly, obstinately, perversely * * * or conduct marked by careless disregard whether or not one has the right so to act." Citing among others, United States vs. Philadelphia & R. Ry. Co., 223 Fed. 207.

In Hargrove vs. United States, 67 Fed. (2d) 821, in a criticism of the charge of the trial court, under a statute making wilfullness an element of the offense, it was said—

"The court here fell into the error of not distinguishing between the elements of an offense, where the statute simply denounces the doing of an act as criminal, and where it denounces as criminal only its wilful doing. In the first class of cases, especially in those

---

Note 3: United States vs. St. Joseph Stockyards Co., 181 Fed. 625; United States vs. Atlantic Coast Line Ry. Co., 173 Fed. 764; Montana Cent. Ry. Co. vs. United States, 164 Fed. 400.

Note 4: United States vs. Boston & M. R. R. Co., 84 Fed. (2d) 365; United States vs. Lehigh Valley R. Co., 204 Fed. 705; United States vs. Southern Ry. Co., 1 Fed. (2d) 607; St. Louis Merchants Bridge Terminal Ry. Co. vs. United States, 209 Fed. 600; St. Louis & S. F. R. Co. vs. United States, 169 Fed. 69; St. Joseph Stockyards Co. vs. United States, 187 Fed. 104; Oregon-Washington R. & Nav. Co. vs. United States, 205 Fed. 337.

offenses mala prohibita, the law imputes the intent * * *. Had the prosecution here been under such a statute, the charge of the court would have been unexceptionable. In the second class of cases a specific wrongful intent, that is, actual knowledge of the existence of obligation and a wrongful intent to evade it, is of the essence."

The judgment was right. It is affirmed.

Judgment

Extract from the Minutes of May 26th, 1937

No. 8380

UNITED STATES OF AMERICA

v.

ILLINOIS CENTRAL RAILROAD COMPANY

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

Clerk's certificate

United States of America

United States Circuit Court of Appeals, Fifth Circuit

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 52 to 60 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8380, wherein United States of America is appellant, and Illinois Central Railroad Company is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 51 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 3rd day of July, A. D. 1937.

[SEAL]

OAKLEY F. DODD,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1937

SUPREME COURT OF THE UNITED STATES

Order allowing certiorari

Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice BLACK took no part in the consideration and decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1937